

AMENDED IN ASSEMBLY SEPTEMBER 11, 2003

AMENDED IN ASSEMBLY SEPTEMBER 8, 2003

AMENDED IN ASSEMBLY SEPTEMBER 2, 2003

AMENDED IN ASSEMBLY JULY 10, 2003

AMENDED IN ASSEMBLY JUNE 23, 2003

AMENDED IN ASSEMBLY JUNE 4, 2003

AMENDED IN SENATE MARCH 19, 2003

AMENDED IN SENATE FEBRUARY 13, 2003

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**SENATE BILL**

**No. 41**

**Introduced by Senator Bowen**

January 6, 2003

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An act to amend Sections 10430, 10515, 10518, and 10526 of, to add Article 2.5 (commencing with Section 10510.4) to Chapter 2.1 of, and to add Article 7.8 (commencing with Section 10830) to Chapter 2.5 of, Part 2 of Division 2 of, the Public Contract Code, relating to public contracts, ~~and declaring the urgency thereof, to take effect immediately.~~  
*contracts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 41, as amended, Bowen. Public contracts: services.

(1) Existing law requires that every contractor who enters into a contract with the state or the University of California for \$10,000 or more be assigned an identification number by the Department of General Services or the university, and requires that if the contractor is

a corporation or firm, the president's assigned number be used exclusively on each contract.

This bill would require each university campus to assign the identification numbers to contractors with whom the campus contracts, instead of all campuses using numbers assigned by the Regents of the University of California, provided that the regents are able to track all identification numbers centrally.

(2) Existing law requires that state or local government selection for the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms be on the basis of demonstrated competence and professional qualifications, rather than competitive bidding, and imposes requirements for the implementation of this method of selection.

This bill would subject the University of California's selection for the professional services of any of those firms, including real property development services firms, as defined, to the same requirements.

(3) Existing law prohibits persons, firms, or their subsidiaries who are awarded state contracts for consulting services from submitting a bid or being awarded a contract on or after January 1, 2003, for any action related to the end product of the consulting services contract.

This bill would change that date to July 1, 2003. This bill would also specify that those provisions do not apply to consulting services contracts that comply with the requirements for the selection of professional services firms, as provided.

(4) Existing law includes various prohibitions with respect to conflicts of interest of persons who are awarded state contracts or contracts with the University of California, or officers or employees of the state or the university who are contracting with the state or university either directly or through other entities.

This bill would additionally require the California State University to comply with those prohibitions.

~~(5) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: ~~2/3~~—majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



*The people of the State of California do enact as follows:*

SECTION 1. Section 10430 of the Public Contract Code, as amended by Section 1 of Chapter 1122 of the Statutes of 2002, is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California and the Trustees of the California State University, except that Article 9 (commencing with Section 10420) shall apply to the Trustees of the California State University.

(b) (1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, and 10411 shall apply to all transactions under that chapter.

(2) Notwithstanding paragraph (1), Section 10365.5 shall not apply to incidental advice or suggestions made outside of the scope of a consulting services contract.

(c) Except as otherwise provided in this chapter, any entity exempted from Section 10295. However, the Board of Governors of the California Community Colleges shall be governed by this chapter, except as provided in Sections 10295, 10335, and 10389.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

1 SEC. 2. Article 2.5 (commencing with Section 10510.4) is  
2 added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract  
3 Code, to read:

4  
5 Article 2.5. Contracts with Private Architects, Engineering,  
6 Environmental, Land Surveying, and Construction Project  
7 Management Firms  
8

9 10510.4. For purposes of this article, the following  
10 definitions apply:

11 (a) “Firm” means any individual, firm, partnership,  
12 corporation, association, or other legal entity permitted by law to  
13 practice the profession of architecture, landscape architecture,  
14 engineering, environmental services, land surveying, or  
15 construction project management.

16 (b) “Architectural, landscape architectural, engineering,  
17 environmental, and land surveying services” include those  
18 professional services of an architectural, landscape architectural,  
19 engineering, environmental, or land surveying nature as well as  
20 incidental services that members of these professions and their  
21 employees may logically or justifiably perform.

22 (c) “Construction project management” means those services  
23 provided by a licensed architect, registered engineer, or licensed  
24 general contractor that meet the requirements of Section 10510.9  
25 for management and supervision of work performed on university  
26 construction projects.

27 (d) “Environmental services” means those services performed  
28 in connection with project development and permit processing in  
29 order to comply with federal and state environmental laws.  
30 “Environmental services” also includes the processing and  
31 awarding of claims pursuant to Chapter 6.75 (commencing with  
32 Section 25299.10) of Division 20 of the Health and Safety Code.

33 (e) “Real property development services” means those  
34 services undertaken by a real estate developer in connection with  
35 the development of a developer-owned project on land owned or  
36 controlled by the university, including, but not limited to,  
37 environmental analysis, landscape planning, site design, market  
38 and financial feasibility, and other incidental services that a real  
39 estate developer may perform for the project.



1 10510.5. (a) Selection by the University of California for  
2 professional services of private architectural, landscape  
3 architectural, engineering, environmental, land surveying, real  
4 property development services, or construction project  
5 management firms shall be on the basis of demonstrated  
6 competence and on the professional qualifications necessary for  
7 the satisfactory performance of the services required. In order to  
8 implement this method of selection, the university shall adopt  
9 procedures that assure that these services are engaged on the basis  
10 of demonstrated competence and qualifications for the types of  
11 services to be performed and at fair and reasonable prices to the  
12 university. Furthermore, these procedures shall assure maximum  
13 participation of small business firms, as defined by the Director of  
14 General Services pursuant to Section 14837 of the Government  
15 Code.

16 (b) These procedures shall specifically prohibit practices that  
17 might result in unlawful activity including, but not limited to,  
18 rebates, kickbacks, or other unlawful consideration, and shall  
19 specifically prohibit university employees from participating in  
20 the selection process when those employees have a relationship  
21 with a person or business entity seeking a contract under this  
22 section.

23 10510.6. (a) The University of California shall follow this  
24 section in negotiating fees and executing a contract for  
25 professional consulting services of a private architectural,  
26 landscape architectural, engineering, land surveying,  
27 environmental, real property development services, or  
28 construction project management firm.

29 (b) After providing notification to the successful firm of its  
30 selection, the university shall provide written instructions for the  
31 negotiations that are to follow. These instructions shall provide the  
32 private consulting firm with necessary information that shall allow  
33 the negotiations to proceed in an orderly fashion. Negotiations  
34 shall begin within 14 days after the successful firm has been  
35 notified of its selection or upon receipt of the cost proposal. The  
36 contractor should be notified if additional time is necessary to  
37 begin negotiations.

38 (c) Upon the completion of negotiations, the university and the  
39 private firm shall proceed to execute a contract that the university  
40 shall complete within 45 days. The contractor should be notified

1 if additional time is necessary to complete the contract. The  
2 university and private firm shall work together to ensure the  
3 successful delivery of the requested services in a timely fashion.

4 (d) In the event an impasse is reached in negotiations, the  
5 university may terminate negotiations and enter into negotiations  
6 with the next qualified firm, in the same manner as prescribed in  
7 Section 10510.8 with respect to management services contracts.

8 10510.7. (a) In the procurement of architectural, landscape  
9 architectural, engineering, environmental, land surveying, real  
10 property development services, and construction project  
11 management services, the university shall encourage firms  
12 engaged in the lawful practice of their profession to submit  
13 annually a statement of qualifications and performance data.

14 (b) (1) Statewide announcement of all projects requiring  
15 architectural, landscape architectural, engineering,  
16 environmental, land surveying, real property development  
17 services, or construction project management services shall be  
18 made by the university through advertisements placed in the  
19 California State Contracts Register and in publications of the  
20 respective professional societies and organizations of persons that  
21 perform those services. Alternatively, the university may develop  
22 policies to provide for electronic statewide notice of the required  
23 announcements to ensure notification through, at a minimum,  
24 appropriate professional societies and organizations and the  
25 California State Contracts Register, to those persons that perform  
26 the services sought to be procured.

27 (2) The university, for each proposed project, shall evaluate  
28 current statements of qualifications and performance data on file  
29 with the university, together with those that may be submitted by  
30 other firms regarding the proposed project.

31 (3) (A) The university, for each proposed project, shall  
32 conduct discussions with no less than three firms regarding  
33 anticipated concepts and the relative utility of alternative methods  
34 of approach for furnishing the required services.

35 (B) The university shall select, from the firms with which it  
36 conducted discussions in order of preference, based upon criteria  
37 established and published by the university, no less than three of  
38 the firms deemed to be the most highly qualified to provide the  
39 services required.

1 (C) If a project announcement results in submissions from  
2 fewer than three qualified firms, the university may then select  
3 from the available qualified firms and shall document its efforts to  
4 receive submissions from additional firms.

5 (D) These procedures shall specifically prohibit practices that  
6 might result in unlawful activity including, but not limited to,  
7 rebates, kickbacks, or other unlawful consideration, and shall  
8 specifically prohibit university employees from participating in  
9 the selection process when those employees have a relationship  
10 with a person or business entity seeking a contract under this  
11 section.

12 (4) This subdivision does not apply to a contract for the services  
13 described in Section 10510.4 with a total contract cost of one  
14 hundred thousand dollars (\$100,000) or less, provided that the  
15 type of project for which the contract is awarded is identified by  
16 the university in an annual announcement, made in accordance  
17 with the provisions of paragraph (1), that identifies the project  
18 needs of the university that are projected to have a total contract  
19 price of one hundred thousand dollars (\$100,000) or less.

20 10510.8. (a) The university shall negotiate a contract with  
21 the best qualified firm for architectural, landscape architectural,  
22 engineering, environmental, land surveying, real property  
23 development services, and construction project management  
24 services at compensation that the university determines is fair and  
25 reasonable to the University of California.

26 (b) Should the university be unable to negotiate a satisfactory  
27 contract with the firm considered to be the most qualified, at a price  
28 the university determines to be fair and reasonable to the  
29 University of California, negotiations with that firm shall be  
30 formally terminated. The university shall then undertake  
31 negotiations with the second most qualified firm. Failing accord  
32 with the second most qualified firm, the university shall terminate  
33 negotiations. The university shall then undertake negotiations  
34 with the third most qualified firm.

35 (c) Should the university be unable to negotiate a satisfactory  
36 contract with any of the selected firms, the university shall select  
37 additional firms in order of their competence and qualification and  
38 continue negotiations in accordance with this article until an  
39 agreement is reached.



1 10510.9. Any individual or firm proposing to provide  
2 construction project management services pursuant to this article  
3 shall provide evidence that the individual or firm and its personnel  
4 carrying out onsite responsibilities have expertise and experience  
5 in construction project design review and evaluation, construction  
6 mobilization and supervision, bid evaluation, project scheduling,  
7 cost-benefit analysis, claims review and negotiation, and general  
8 management and administration of a construction project.

9 SEC. 3. Section 10515 of the Public Contract Code is  
10 amended to read:

11 10515. (a) No person, firm, or subsidiary thereof who has  
12 been awarded a consulting services contract may submit a bid for,  
13 nor be awarded a contract on or after July 1, 2003, for the provision  
14 of services, procurement of goods or supplies, or any other related  
15 action that is required, suggested, or otherwise deemed  
16 appropriate in the end product of the consulting services contract.

17 (b) Subdivision (a) does not apply to either of the following:

18 (1) Any person, firm, or subsidiary thereof who is awarded a  
19 subcontract of a consulting services contract that amounts to no  
20 more than 10 percent of the total monetary value of the consulting  
21 services contract.

22 (2) Consulting services contracts that comply with Article 2.5  
23 (commencing with Section 10510.4).

24 (c) (1) Subdivision (a) does not apply to any person, firm, or  
25 subsidiary awarded a consulting services contract by a University  
26 of California medical center when the provision of service,  
27 procurement of goods or supplies, or any other related action  
28 required, suggested, or otherwise deemed appropriate in the end  
29 product of the consulting services contract, is necessary to avoid  
30 a competitive disadvantage in the hospital industry, improve  
31 patient care, protect the privacy of patient information, or avoid  
32 significant delay and additional expense.

33 (2) The University of California shall report within 30 days on  
34 any exemption granted under paragraph (1) to the Joint Legislative  
35 Budget Committee and the Department of Finance. The report  
36 shall include a description of the circumstances that warranted the  
37 exemption, the effects of the exemption on patient care or patient  
38 privacy, and a calculation of the projected costs savings to the  
39 institution as a result of the exemption.



1 SEC. 4. Section 10518 of the Public Contract Code is  
2 amended to read:

3 10518. (a) Except as otherwise provided in subdivision (b),  
4 each contractor who enters into a contract with a University of  
5 California campus for ten thousand dollars (\$10,000) or more shall  
6 be assigned an identification number by the chancellor of that  
7 university campus. Each contractor who has been assigned a  
8 number shall list it on each contract the contractor enters into with  
9 the university campus, regardless of the amount of the contract. In  
10 the case of a corporation or firm, the chancellor's assigned number  
11 shall be used exclusively on each contract with that particular  
12 chancellor's campus. The assigned number shall remain  
13 unchanged regardless of future name changes.

14 (b) If the identification numbers cannot be tracked centrally by  
15 the Regents of the University of California, then the regents, and  
16 not the chancellors, shall assign the identification numbers.

17 SEC. 5. Section 10526 is added to the Public Contract Code,  
18 to read:

19 10526. Sections 10522, 10523, 10524, and 10525 of this  
20 article do not apply to violations of Article 2.5 (commencing with  
21 Section 10510.4) of this chapter.

22 SEC. 6. Article 7.8 (commencing with Section 10830) is  
23 added to Chapter 2.5 of Part 2 of Division 2 of the Public Contract  
24 Code, to read:

25  
26 Article 7.8. Conflict of Interest  
27

28 10830. (a) No person, firm, or subsidiary thereof who has  
29 been awarded a consulting services contract may submit a bid or  
30 be awarded a contract on or after July 1, 2003, for the provision of  
31 services, the procurement of goods or supplies, or any other related  
32 action that is required, suggested, or otherwise deemed  
33 appropriate in the end product of the consulting services contract.

34 (b) This section does not apply to any person, firm, or  
35 subsidiary thereof who is awarded a subcontract of a consulting  
36 services contract that amounts to no more than 10 percent of the  
37 total monetary value of the consulting services contract.

38 (c) This section does not apply to consulting services contracts  
39 subject to Chapter 10 (commencing with Section 4525) of  
40 Division 5 of Title 1 of the Government Code.

1 10831. No officer or employee of the California State  
2 University shall engage in any employment, activity, or enterprise  
3 for which the officer or employee receives compensation or in  
4 which the officer or employee has a financial interest if that  
5 employment, activity, or enterprise is sponsored or funded, or  
6 sponsored and funded, by any California State University  
7 department through or by a California State University contract  
8 unless the employment, activity, or enterprise is within the course  
9 and scope of the officer's or employee's regular California State  
10 University employment. No officer or employee in the California  
11 State University shall contract on his or her own individual behalf  
12 as an independent contractor with any California State University  
13 department to provide services or goods. This section shall not  
14 apply to officers or employees of the California State University  
15 with teaching or research responsibilities.

16 10832. (a) No retired, dismissed, separated, or formerly  
17 employed person of the California State University employed with  
18 the California State University or otherwise appointed to serve in  
19 the California State University may enter into a contract in which  
20 he or she engaged in any of the negotiations, transactions,  
21 planning, arrangements, or any part of the decisionmaking process  
22 relevant to the contract while employed in any capacity by any  
23 California State University department. The prohibition of this  
24 subdivision shall apply to a person only during the two-year period  
25 beginning on the date the person left California State University  
26 employment.

27 (b) For a period of 12 months following the date of his or her  
28 retirement, dismissal, or separation from the California State  
29 University, no person employed in the California State University  
30 or otherwise appointed to serve in the California State University  
31 may enter into a contract with any California State University  
32 department, if he or she was employed by that department in a  
33 policymaking position in the same general subject area as the  
34 proposed contract within the 12-month period prior to his or her  
35 retirement, dismissal, or separation. The prohibition of this  
36 subdivision shall not apply to a contract requiring the person's  
37 services as an expert witness in a civil case or to a contract for the  
38 continuation of an attorney's services on a matter he or she was  
39 involved with prior to leaving the California State University.



1 (c) This section does not prohibit the rehire or reappointment  
2 of California State University employees after retirement,  
3 consistent with California State University administrative  
4 policies, nor does it apply to inventors and authors of intellectual  
5 property licensed under technology transfer agreements.

6 10833. (a) Except as otherwise provided in subdivision (b),  
7 each contractor who enters into a contract with a California State  
8 University campus for ten thousand dollars (\$10,000) or more  
9 shall be assigned an identification number by the president of that  
10 California State University campus. Each contractor who has been  
11 assigned a number shall list it on each contract the contractor enters  
12 into with the California State University campus, regardless of the  
13 amount of the contract. In the case of a corporation or firm, the  
14 president's assigned number shall be used exclusively on each  
15 contract with that president's campus. The assigned number shall  
16 remain unchanged regardless of future name changes.

17 (b) If the identification numbers cannot be tracked centrally by  
18 the Trustees of the California State University, then the trustees,  
19 and not the presidents, shall assign the identification numbers.

20 ~~SEC. 7. This act is an urgency statute necessary for the~~  
21 ~~immediate preservation of the public peace, health, or safety~~  
22 ~~within the meaning of Article IV of the Constitution and shall go~~  
23 ~~into immediate effect. The facts constituting the necessity are:~~

24 ~~In order to conform the threshold date specified in Section~~  
25 ~~10515 of the Public Contract Code to the operative date of that~~  
26 ~~section, and thereby avoid any potential problems resulting from~~  
27 ~~the unintended retroactive application of the statute, it is necessary~~  
28 ~~that this act take effect immediately as an urgency statute.~~

